IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1927 OF 2005

Arvind Yashwant Limaye ...Petitioner
Vs.
The State of Maharashtra ...Respondent

Shri. K.K. Malphatak for the Petitioner.
Shri. R.Y. Mirza, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 05, 2005.

P.C.:

1. Heard the advocate appearing for the Petitioner and the learned A.P.P. for the State. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith. The challenge in this Writ Petition filed under article 227 of the Constitution of India is to the order dated 20th August, 2001 passed by the learned Judicial Magistrate (A.C.)Court, Pune. By the order impugned, 'C' summary was granted on the basis of the police report submitted under section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Act of 1973).

2. The Petitioner is the first informant. The offence was registered against the accused under section 406 and 34 of the Indian Penal Code on the basis of the complaint made by the Petitioner. It appears that the concerned Investigating Officer submitted the report to the learned Magistrate on 07th

May, 2001 with a request to classify the offence as ‘C’ final.

3. The learned Counsel appearing for the Petitioner submitted that the order passed by the Judicial Magistrate, First Class on the report under section 173 of the said Act of 1973 is a judicial order. He submitted that the learned Magistrate ought to have issued notice to the Petitioner on the basis of the report submitted by the Investigating Officer and the order classifying the case as ‘C’ summary could have been passed only after giving an opportunity of being heard to the Petitioner. He has placed reliance on the certain decisions of this court and Apex Court, a reference to which will be made at a later stage.

4. The learned A.P.P. has supported the impugned order. He has placed on record relevant material for my perusal.

5. I have considered the rival submissions. The learned A.P.P. has submitted for my perusal the original report dated 07th May, 2001 on which the learned Magistrate has passed impugned order. The impugned order is neither hand-written nor type-written and a rubber stamp of the order has been affixed on the report.

6. It is not in dispute that the Petitioner is the first informant on the basis of whose complaint F.I.R. was registered. It will be necessary to refer to the decisions of this Court and the Apex Court relied upon by the learned Counsel appearing for the Petitioner. A Division Bench of this Court in a decision reported in AIR 1960 Bombay Page 240 (State & Ors. Vs. Murlidhar Govardhan & Ors.) held that while considering the report under section 173 of the said Act of 1973, the learned Magistrate is required to act judicially and pass such order on the report as the circumstances may warrant. In paragraph No.6 of the said decision the Division Bench has held thus:

> (6) **An order passed by a Magistrate on a report under S.173(1) of the Criminal Procedure Code requesting that a Summary "A, B or C" be issued is in its very nature a judicial order and not an administrative order.** When a report is submitted to a Magistrate under S.173 of the Code of Criminal Procedure by a Police Officer praying that a Summary of the nature described in R.203 of the Bombay Police Manual, may be issued the Magistrate must act judicially and pass such order on the report as the circumstances may warrant. **The Magistrate is not bound to issue the Summary which is asked for nor is he at all bound to issue a Summary.**(Emphasis supplied)

In paragraph No.14 of the said decision, the Division Bench held that a Magistrate cannot lightly pass an order that a chargesheet be filed. The Division Bench

held that the learned Magistrate has to pass an order only after careful consideration of the material placed by the Police Officer alongwith his report.

7. A reliance is also placed on decision of a Division Bench of this Court reported in 1997(1) Maharashtra Law Journal (Shravan Baburao Vs. N.B. Hirve. Referring to the some of the decisions of the Apex Court and this court, the Division Bench reiterated that order granting summaries is a judicial order and it is required to be passed in exercise of judicial function. This court held that the order granting summarries can be impugned by filing either a Revision Application under Code of Criminal Procedure, 1973 or a Writ Petition under articles 226 or 227 of the Constitution of the India. A reference will have to be also made to a decision of the Apex Court reported in AIR 1985 Supreme Court 1285 (Bhagwant Singh Vs. Commissioner of Police & Anr.). The Apex Court had occasion to consider the following issue in the said decision:

> "The short question that arises for consideration in this writ petition is whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of the First Information Report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceeding without issuing notice to the first informant or to the injured or in

> case the incident has resulted in death, to the relatives of the deceased."

The Apex Court considered the scheme of the relevant provisions of the said Act of 1973 and proceeded to hold that

> **"We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-sec.(2)Ii) of S.173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."**

While rendering the said decision, the Apex Court negatived the contention if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. The Apex Court also held that in any case, the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of S.173 of the said Act of 1973.

8. Coming to the facts of the present case, it is not disputed that the learned Magistrate did not issue notice to the Petitioner of the report submitted by the Investigating Officer. No opportunity of being heard was granted to the Petitioner. In view of the

law laid down by the Apex Court in the case of Bhagwant Singh, the order impugned deserves to be quashed only on this ground. It must be noted here that a rubber stamp of the order accepting "C" Summary has been affixed on the report and the learned Trial Judge has signed below the same. The well settled law is that while passing such order on the report, the learned Magistrate exercises judicial function. Moreover, before passing such order, he is required to scrutinize the report and documents submitted alongwith the report. From the manner in which the order is passed, it is apparent that there was no proper application of mind on the part of the learned Magistrate.

9. Hence, the Petition must succeed and I pass the following order:

: O R D E R :

i) The impugned order passed by the learned Magistrate on 20th August, 2001 on report dated 07th May, 2001 in C.R.No.370 of 1999 registered with Deccan Police Station, Pune is quashed and set aside.

ii) The learned Judicial Magistrate, First Class (A.C.) Court, Pune will give notice of the report to the Petitioner and will pass appropriate orders on the

report after giving an opportunity of being heard to the Petitioner.

iii) Rule is made partly absolute in above terms.

iv) All contentions of the parties on merits are kept open.

v) Parties to act upon an authenticated copy of this order.

JUDGE